

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

In re:

WAREHOUSE 86, LLC

Debtor

**CASE NO. 08-03423-EE
Chapter 11**

**RESPONSE OF DEBTOR TO MOTION OF FIFTH THIRD BANK
TO COMPEL ACCEPTANCE OR REJECTION OF A LEASE AGREEMENT
AND TO LIFT THE AUTOMATIC STAY
[Dkt. # 130]**

Warehouse 86, LLC, the Debtor and debtor-in-possession herein (the “Debtor”), by and through its undersigned attorneys, files this Response to the *Motion of Fifth Third Bank to Compel Acceptance or Rejection of a Lease Agreement and to Lift Automatic Stay* (the “Motion”) as follows:

1. The Debtor admits the allegations of paragraph 1 of the Motion, specifically that Fifth Third Bank (“Bank”) was the holder of the Lease Agreement (Lease # 0765227475) (the “Lease”) executed by the Debtor covering a 2005 Cadillac XLR (VIN: 1G6YV34A255600539) (the “Vehicle”), a copy of which Lease is attached as Exhibit “A” to the Motion.

2. Denied. The Lease is no longer property of the bankruptcy estate. As reflected by the documents attached hereto as collective Exhibit “1,” this Vehicle was surrendered to the Bank’s agent, Adesa Memphis Auto Auction, located at 5400 Getwell Road, Memphis, TN on August 29, 2008, pursuant to the instructions of the Bank. The Vehicle was surrendered prior to the expiration of the Lease, prior to the date the Vehicle was required to be surrendered, and prior to the filing of the Bankruptcy Case. In accordance with directions the Debtor received from the Bank, prior to the Vehicle being surrendered to the Bank’s agent, the Debtor scheduled

the Vehicle for an inspection conducted by Auto VIN (phone number 866-585-8080) at the location specified by the Bank. The Debtor complied with all of the Bank's instructions for surrendering the Vehicle. Subsequently, after surrendering the Vehicle, the Debtor was sent an invoice in the amount of \$549.90 for allegedly excess wear and tear, a disposition fee and a late charge. A member of the Debtor paid this invoice, even though she did not believe that it was owed, just to conclude this matter. Attached as collective Exhibit "2" is a copy of that invoice and the check of Joy St. James, a member of the Debtor, for the \$549.90 charged by the Bank. Apparently, the Bank either lost or misplaced the paperwork for this transaction because it continued to send invoices to the Debtor as if the Vehicle had not been returned. (See collective Exhibit "3.") Thereafter, one of the members of the Debtor went back to the turn-in location for the Vehicle and discussed the matter and was assured that the Bank had it straightened out, but it is now apparent that the Bank's records still do not reflect that the Vehicle has been returned.

3. The Debtor denies that the Bank is entitled to the relief requested under paragraph 3 of the Motion.

WHEREFORE, the Debtor prays that this Motion be denied in its entirety, and that the Debtor be granted such other relief as to which it may be entitled.

THIS, the 20th day of May, 2009.

Respectfully submitted,

WAREHOUSE 86, LLC

By: *s/ Stephen W. Rosenblatt*

Stephen W. Rosenblatt (MS Bar No. 5676)

Paul M. Ellis (MS Bar No. 102259)

ATTORNEYS FOR DEBTOR

OF COUNSEL:

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CERTIFICATE OF SERVICE

I do hereby certify that the foregoing pleading was filed electronically through the Court's ECF system and served electronically on all parties enlisted to receive service electronically and was separately served by e-mail on the following persons:

Ronald H. McAlpin, Esq.
Trial Attorney, Office of the United States Trustee
A. H. McCoy Federal Building, Suite 706
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Jackson, MS 39269
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Larry Spencer, Esq.
King & Spencer
Post Office Box 123
Jackson, MS 39205
lspencerlawyer@aol.com
ATTORNEY FOR BANK

and by electronic mail to the following members of the Creditors Committee:

Ms. Teresa M Shipe
Katt Worldwide Logistics, Inc.
4102 So. Mendenhall Road
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Edwin W. Christensen, Esq.
Overstock.com, Inc.
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echristensen@overstock.com

Mr. Bobby Thomas
Thomas Sales & Services, Inc.
2300 Sitler St., Bldg. 685
Memphis, TN 38114
bthomas@abcthomas.com

This, the 20th day of May, 2009.

/s/ Stephen W. Rosenblatt

Stephen W. Rosenblatt

RECEIPT FOR REPOSSESSED VEHICLE

DATE 8-29

ACCOUNT NUMBER _____

THE UNDERSIGNED HEREBY ACKNOWLEDGES RECEIPT FOR THE VEHICLE

YEAR 05 MAKE Cadillac MODEL XTL VIN NUMBER 600539BY Joy St. James

SLOT # _____

DELIVERY [Signature]MILEAGE 36,822KEYS 1ACCT NAME Warehouse86.comJoy St. JamesDOORS 2RADIO ✓COLOR Silver

PROPERTY _____

0765227475

~~86658580~~

1G6YV34A255600539

Ats Jane Spicer

513-358-6020

Lease termination

Exhibit "1"

Printed 09/22/2008 01:26 PM

Vehicle Information						
1G6YV34A255600539 2005 CADILLAC XLR Silver 2 door 36,823 Miles (6-digit 0do)						
Current Owner: M5713 - Fleet Lease Inventory				Invoice Amount:		
5400 Getwell Road Memphis TN 38118				Last Block Activity: Never Run		
Office Number: (901) 365-6300				Current Tran Acct: ADESA		
Options	Groundwater	Special Title	Vehicle History	Internet	ASC	Notes
Activity	Commercial	Title	Inventory	Financial	Registration	Wash
Fleet Lease Inventory				Inventory 1 of 1		
Checkin Date/Time: 09/04/2008 8:56 AM				Stock #: 232248		
Checkin Employee: Sue Harris				Gate Pass Requestor: (No gate passes printed)		
In Service Date:				Checkout Date/Time: (Still checked in)		
Consignment Date:				Checkout Employee:		
Pickup Date: 00/00/0000				Checkout Reason:		
Arrival Date: 08/29/2008				Internet Vehicle: <input type="checkbox"/>		
Legal Sale Date: 00/00/0000						
Loss Date: 00/00/0000						
Comments:						
				Work Pass History		

Printing to: MEMPH-W-KCCRYK-HP LaserJet 2200 Series PCL

Interest Checking - 7341 : Check Image

Check Image:

- MOLAS PASS SUNRISE, COLORADO -

PAUL ST JAMES
JOY ST JAMES
3276 KINDERHILL CIRCLE
GERMANTOWN, TN 38138

SIERRA CLUB
91-170/1221 2380
12-08-08

Pay to the order of 3rd 5th Bank \$ 549.90

Five Hundred Forty Nine and 90/100 Dollars

BANK OF AMERICA

MEMO: [Signature]

⑆122101706⑆ 004659527341⑈ 2380

SECURITY FEATURES

THE SECURITY FEATURES OF THIS CHECK ARE:

1. MICR LINE - A line of numbers at the bottom of the check that can be read by a computer.

2. VOID WATERMARK - A watermark that disappears when the check is held up to the light.

3. VOID SECURITY PATTERN - A security pattern that disappears when the check is held up to the light.

4. VOID SECURITY PATTERN - A security pattern that disappears when the check is held up to the light.

5. VOID SECURITY PATTERN - A security pattern that disappears when the check is held up to the light.

FEDERAL RESERVE BANK REGULATION CC

Deposit Only

0000000765227474 88803341 Credit to Account

00549.90 of within named payee without

031 001 Prejudice Fifth Third Bank>042000314<

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

RESERVED FOR FINANCIAL INSTITUTION USE *

ENDORSE HERE

FIFTH THIRD AUTO LEASING TRUST
MD1MOB1U-3161
CINCINNATI OH 45263



WAREHOUSE 86 LLC
JOY ST
JOY ST
3241 KENNEY DR
GERMANTOWN TN 38139-8031

Notice Date: September 05, 2008
Lease Number: *****7475



Important Information: Your Lease-End Action Is Past Due

Dear WAREHOUSE 86 LLC,

We wish to inform you that your Fifth Third Lease vehicle is past the original scheduled end date, and our records show that your vehicle has not been purchased or returned. Please remember that you will continue to accrue monthly rental/lease payments until your vehicle has been purchased or returned to us.

To avoid accruing monthly payments, we encourage you to do one of the following:

(1) Purchase your lease vehicle.

To find out if you qualify for a special Fifth Third discounted financing program, simply call us toll-free 1-877-744-5626, Monday through Friday, 8 AM to 9 PM, Saturday and Sunday, 8 AM to 5 PM ET.

OR

(2) Return your vehicle to Fifth Third.

To explore this option, simply call us 1-800-447-7928 (option 4), Monday through Friday, 8 AM to 5 PM ET.

Please remember that returning your lease vehicle to a dealer does not satisfy your end-of-lease obligation. However, if you have already done this, you will need to get a copy of the Federal Odometer Statement and the Lease Return Vehicle Receipt indicating the dealer has possession of the vehicle. Please notify us of this immediately by calling 1-800-835-3265 (7 days a week, 24 hours a day - automated confirmation).

For information on other Fifth Third products and services, stop by any of our Banking Centers or visit us online at www.53.com. We'll show you how the things you do today can bring you closer to a better tomorrow.

Thank you for choosing Fifth Third Bank.

Sincerely,

Donald B. Coleman
Senior Vice President

Exhibit "3"

FIFTH THIRD AUTO LEASING TRUST
MD1MOB1U-3161
CINCINNATI OH 45263



WAREHOUSE 86 LLC
JOY ST
JOY ST
3241 KENNEY DR
GERMANTOWN TN 38139-8031

Notice Date: September 08, 2008
Lease Number: *****7475



Your Lease is Now Delinquent

Dear WAREHOUSE 86 LLC,

Our records show that your lease account is currently past due in the amount of \$1,033.49, which includes current late charges of \$35.00. The total amount of \$1,033.49 must be paid immediately.

Please include the bottom portion of this page of the letter with your payment and send it to us at:

Fifth Third Auto Leasing Trust
PO Box 63-0041
Cincinnati, OH 45263

If you have already made this payment, please disregard this notice.

If you have any questions, please call us at 1-800-972-3030. Our Customer Service Professionals are available to assist you Monday through Friday, 8 AM to 6 PM; Saturday, 8 AM to 5 PM ET. For information on other Fifth Third products and services, stop by any of our Banking Centers or visit us online at www.53.com. We'll show you how the things you do today can bring you closer to a better tomorrow.

Thank you for choosing Fifth Third Bank.

Sincerely,

Donald B. Coleman
Senior Vice President

Member FDIC. Equal Housing Lender. Fifth Third and Fifth Third Bank are registered service marks of Fifth Third Bancorp.



WAREHOUSE 86 LLC
JOY ST
JOY ST
3241 KENNEY DR
GERMANTOWN TN 38139-8031

Fifth Third Auto Leasing Trust
PO Box 63-0041
Cincinnati, OH 45263



Lease Delinquent Notice

Statement Date:	September 08, 2008
Account Number:	*****7475
Payment Due Date:	September 01, 2008
Payment Due:	\$998.49
Late Charges:	\$35.00
Total Payment Due:	\$1,033.49

Amount Enclosed: \$ _____

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

5211603640765227475